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March 6, 2006

Honorable Rick Auerbach
Los Angeles County Assessor
500 West Temple St., Rm. 180
Los Angeles, CA 90012-2770

Attn:
Supervisor, Exemptions Division

Dear Mr. Auerbach:

Subject: Property Tax Welfare Exemption

This is in response to the recent e-mail to Ms. Mary Ann Alonzo, Tax Counsel IV, wherein you requested our opinion as to the availability of the welfare exemption for the property owned by Committee (Committee) used in its operation of a "Cityride" transportation service for senior citizens and disabled persons. For the reasons hereinafter set forth, in our view, the exemption is not available to that property for the 2006 2007 fiscal year should a claim for exemption for that year be filed; or for the 2005-2006 fiscal year, assuming the applicable Amendment to Agreement Number C- of the Contract between the City of Los Angeles, California and Committee in effect on and before January 1, 2005, is similar to the Sixth Amendment thereto.

Facts

Your e-mail states:

> It is our position that this program, Cityride, is not an exempt use of the property owned by the claimant. Effectively, the claimant is just a vendor for the City of Los Angeles who has been contracted to run one aspect of the city's transportation services. It doesn't appear there is anything charitable about the services they provide and they are adequately being compensated by the city. An exemption on this property would give them an unfair advantage over for-profit entities bidding for the same contract.

Attached thereto is a copy of the February 14, 2005 Claim for Welfare Exemption, a copy of the Sixth Amendment to Agreement Number C- of Contract between the City of Los Angeles, California (City) and Committee, and City/Los Angeles Department of Transportation (LADOT) Cityride information from the internet.

The claim states that the property is used for charitable purposes and activities – "CityRide." The Field Inspection Report states that claimant operates a Cityride program for senior citizens and disabled persons of the community, with a recommendation for denial because of C.N.A. (Charitable Aspect Not Apparent).

The Sixth Amendment states, among other things, that the City will pay Committee an amount equal to the number of actual revenue service hours operated each month times the hourly rate of $59.77, not to exceed 22,352 hours and $1,336,081. Cityride information from the internet includes the following:

> CITYRIDE is a transportation service for City of Los Angeles residents administered by the Los Angeles Department of Transportation with the assistance of the Department of Aging. These services are a component of the Metro System, the region's integrated transportation system.
>
> In order to best serve the senior and mobility impaired citizens of Los Angeles, LADOT offers a service called Cityride. Its members can purchase Metro passes, taxi rides, private lift van services and dial-a-ride trips at a substantial discount.
>
> Cityride offers 4 discount transportation programs for individuals in the City aged 65 or older and for persons with disabilities, to help you get to the places you need to be, and be part of the things you enjoy.

Analysis[1]

As you know, a basic requirement for the welfare exemption from property taxes provided in Revenue and Taxation Code[2] section 214 is that the organization which owns the property for which exemption is claimed must be organized and operated for an exempt purpose, as specified. (Rev. & Tax Code, § 214, subd. (a).) Under subdivision (a) of section 214, the exemption is available for property used exclusively for charitable purposes, owned and operated by an organization organized and operated for such purposes if all the requirements for exemption are satisfied. (Rev. & Tax Code, § 214, subd. (a).) The charitable purposes aspect of the welfare exemption has been broadly construed by the California Supreme Court to include a wide range of activities that benefit the general public. (*Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13.) The primary test is whether the activity provides a general community benefit whose "ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof." (*Stockton Civic Theatre, supra,* at page 20.) The availability of the exemption for property used exclusively for housing and related facilities for elderly and disabled families is specifically provided for in section 214, subdivision (f). Exemption for other properties used exclusively for elderly or disabled persons is similarly available if the requirements of section 214 are met.

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[1]The February 14, 2005 claim is for the 2005-2006 fiscal year. Applicable to that claim would be the Fifth Amendment or another amendment prior to the Sixth Amendment and in effect on and before January 1, 2005. The applicable amendment should be reviewed and considered in the same manner in which the Sixth Amendment is considered herein. The Sixth Amendment, made July 1, 2005, for July 1, 2005, through December 31, 2005, would be applicable for a claim for the 2006-2007 fiscal year. Considerations are the same, however, for both fiscal years, as indicated.

[2]Unless otherwise specified, all section references are to the Revenue and Taxation Code.

1. Cityride is a City service administered by LADOT, a governmental activity that is not "charitable". Committee has merely contracted with City to assist City in performing its service.

Information from the internet, quoted above and otherwise, indicates that Cityride is a City service administered by LADOT, a component of the Metro System, the region's integrated transportation system. Program information, applications, etc. are all in the name of Cityride and/or Cityride/LADOT; the Committee is not mentioned or referred to.

In *City of Los Angeles v. County of Los Angeles* (1971) 19 Cal.App.3d 968, 972, wherein the City sought a refund of property taxes paid on a youth camp located within the county but outside the City's boundaries, in holding against the City, the court of appeal found that the City conducts at least three important activities which are not "charitable" by any definition:

> It operates a department of water and power which furnishes both water and electricity to the inhabitants of the city; it operates a harbor department; and it operates an elaborate airport system. None of these are the kind of incidental and collateral activities which, under the rulings cited to us and under *Pacific Home v. County of Los Angeles* (1953) 41 Cal.2d 844, 850-851 [264 P. 2d 539], and similar cases, do not detract from the charitable character of a corporation.

The operation of a transportation service likewise, in our view, would be an activity which is not charitable, much the same as the activities of operating a harbor department and operating an airport system. If the operation of a transportation service is not a charitable activity, of course, properties used in the course of the activity, whether City-owned or otherwise, are not being used in a charitable activity or, for purposes of the welfare exemption, in a qualifying charitable activity.

As the Sixth Amendment states and, presumably, prior amendments stated, Committee has merely contracted with City to assist City in performing City's service, so much per hour, not to exceed so many hours and total contract amounts. In so contracting, Committee is merely providing paid-for services at the contracted-for rates and for the contracted-for hours. There is no charitable aspect to paid-for services for purposes of the welfare exemption, in addition to the above view that the City's operation of a transportation service is not an activity which is charitable.

2. If it could be successfully contended that Cityride is a City and Committee service or solely a Committee service, not a City service, Committee's property used in the operation of the service should still not be eligible for the exemption.

If it could successfully contended that Cityride is a City and Committee service or solely a Committee service, Committee's property should still not be eligible for the exemption because there does not appear to be any charitable aspect to the Committee's role in the service, because Committee is merely providing paid-for services, and because Committee's properties are used in commercial activities or activities equivalent to commercial activities which are nonqualifying activities. Cases are to the effect that if property of a tax-exempt organization competes in common business with the properties of others, ventures commercial in nature and classifiable as business ventures, exemption is not available.

Assessors' Handbook section 267, Part I, Welfare Exemption, Chapter 1 discusses the charitable purposes aspect of the exemption. As stated in the Charitable Contributions Indicate Charitable Purpose section therein, in the first paragraph:

> The word *charitable* in a legal sense includes every gift for a general public use, to be applied consistent with existing laws, for the benefit of an indefinite number of persons. Charitable purposes, for purposes of tax exemption, has as its common element the accomplishment of objectives that are beneficial to the community. A charitable organization uses gifts or contributions to provide a benefit to the community as a whole or an unascertainable and indefinite portion thereof. (Footnotes omitted.)

The section then discusses the concept of a charitable organization being a publicly-supported charity and its receipt of donations from outside sources which it, in turn, passes on to the recipients of its charity, concluding thusly:

> Thus, an organization's receipt of donations is an important criteria by which its charitable purpose can be demonstrated.[3]

In contrast, instances occur where organizations which are or might be qualifying charitable organizations do not use donations to provide a benefit or gift to the community but rather, charge or collect fees for the services they provide. There is no charitable aspect to paid-for services for purposes of the exemption. In return for the services they provide, the organizations are either being reimbursed for the costs of the services or are recovering their costs and then some. In the latter instance, if the facts supported the conclusion, it would be contrary to the requirement of section 214, subdivision (a) that an owner not be operated for profit.

An example of a nonqualifying paid-for service instance is set forth in the last paragraph of the Charitable Contributions Indicate Charitable Purpose section:

> The following case illustrates that an organization must still be able to demonstrate a charitable purpose by providing a benefit to the community as a whole or an unascertainable and indefinite portion thereof. The nonprofit claimant organization, which provided low-rent housing for the elderly and handicapped, was found not to have a charitable purpose because the rents charged generally were at market price which was necessary to pay the cost of operation and amortize the purchase price of the land and building. The organization offered no charitable services to the tenants and there was no showing that it had received a subsidy or donation which it could or did pass on to its recipients in the form of lower rents.[4] (Footnote omitted.)

Similarly, courts of appeal called upon to consider the availability of the welfare exemption have recognized that properties of qualifying organizations used in commercial activities for which commercial rates are charged are not eligible for exemption:

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[3]The paragraph then concludes: "However, the absence of donations, by itself, will not result in a determination that a charitable purpose does not exist if it can be shown that the organization is providing a benefit or gift to the community." (Footnote omitted.)

[4]Case reference is to *Martin Luther Homes v. County of Los Angeles* (1970) 12 Cal.App.3d 205.

> Under the agreed facts here, the conclusion is inescapable that the restaurant, as well as the tailor and barber shops, all available to the public as well as to plaintiff's members, and charging standard prices for their respective services in competition with like enterprises maintained in the community, are largely commercial in character and properly classifiable as business ventures….
>
> It is true, as plaintiff contends, that in the last cited case the restaurant facility maintained on the Y.M.C.A. property and held to constitute 'a commercial enterprise' so as not to be tax exempt, was rented to outside parties rather than operated by Y.M.C.A. employees as is the situation here. Nevertheless the absence of such consideration alone does not establish the propriety of plaintiff's exemption claim on this particular facility in view of its service of the general public and the basic competitive nature of its operation in relation to similar business in the community that is taxable.…" (*Y.M.C. A. v. County of Los Angeles* (1950) 35 Cal.2d 760, 775.)
>
> Finally, churches have traditionally undertaken to provide services to their communities analogous to those provided by nonreligious charitable institutions. A church might house senior citizens' centers, provide clothing and food to the needy, or run an elementary school, even if such activities are not accompanied by religious worship or proselytization. On the other hand, if the property is used for noncharitable purposes, or is organized in such a way that it is essentially comparable to commercial activity, it will not be exempt simply because it is owned and operated by a church rather than by a private club. (*Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal.App.3d 382, 394.)
>
> The Church in this case essentially is doing the same thing that its predecessor in title to the property had been doing: operating a swim and tennis club. This situation is distinguishable from other cases involving payments by the recipients of charitable activities, because in those cases the payments made by individuals using the facilities were usually supplemented by community chest funds or the like, and the benefit granted was greater than the cost incurred by the individual. (See, e.g., *Y.M.C.A.* v. *County of L.A., supra,* 35 Cal.2d 760, 771; *Fredericka Home v. County of San Diego, supra,* 35 Cal.2d 789, 791.) But 'self-help is not charity.' (*Id.* at 400.)

With respect to your contention that an exemption on this property would give the Committee an unfair advantage over for profit entities bidding for the same contract, such was a basis for the court of appeal's decision in *Honeywell Information Systems, Inc.* v. *Sonoma County* (1974) 44 Cal.App.3d 23. The court held that nonqualifying use of a public school's computer system approximately 3.56 percent of the time precluded a conclusion that the property was eligible for the public schools exemption (former article XIII, section 1, now article XIII, section 3(d) of the California Constitution, and Revenue and Taxation Code section 202(c)) as "property used exclusively for public schools." In so concluding, the court noted that it is the use of property which renders it exempt or nonexempt from taxation (p. 29), <u>that if property of a tax-exempt institution competes in the common business with the property of others, it must bear tax as much as theirs</u> (p. 30), and that a computer system is not tax exempt simply because it is under the control of and operated by the tax-exempt institution (p. 31). (Emphasis added.) Accordingly, the property at issue does not qualify for the welfare exemption.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ J. K. McManigal, Jr.

J. K. McManigal, Jr.
Senior Tax Counsel

JKM:eb
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cc: Mr. David Gau, MIC:63
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